

ALVA F. ROCKWELL AND
ALVA A. ROCKWELL

IBLA 80-164

Decided May 13, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void. 3833 (U-952).

Affirmed.

1. Administrative Authority: Estoppel -- Estoppel -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

2. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Mining Claims: Hearings -- Rules of Practice: Hearings

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Paul W. Mortensen, Esq., Moab, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from a decision dated November 8, 1979, by the Utah State Office, Bureau of Land Management (BLM), declaring appellants' mining claims 1/ abandoned and void for failure to timely file notices of location as required by 43 CFR 3833.1-2(a). That regulation provides:

The owner of an unpatented mining claim, mill site, or tunnel site located on or before October 21, 1976, on Federal land, excluding land within units of the National Park System * * * shall file (file shall mean being received and date stamped by the proper BLM Office), on or before October 22, 1979, in the proper BLM Office a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location] containing the information in paragraph (c) of this section shall be filed.

Appellants' claims were located in 1955. The decision states that the notices of location were not filed until November 5, 1979.

In their statement of reasons appellants point out that the claims are under lease to T. S. & R. Mining, Inc. Appellants say that T. S. & R. mailed the recordation materials together with a check for the filing fee. The State office received these items on August 17, 1979, and on that day telephoned appellants that no location notices had as yet been filed. Appellants assert that "at the time" Alva E. Rockwell was told by a BLM official not to send in the location notices until he received written notice, in order to prevent loss or misfiling of the documents. By letter dated September 20, 1979, BLM returned the recordation materials and filing fee to T. S. & R. advising that recordation was deficient for want of location notices. 2/ Appellants themselves received no written notice from BLM, but the filing fee together with the recordation materials were returned to them on or about October 28, 1979.

1/ The mining claims are identified as:

Laura 1, 2; Suzy 1, 2; Sammy 1, 2; Porky 1, 2; Readick, Readick; Fay 1, 2; Tootsie 1, 2; Carol 1, 2; Wanda 1, 2; Marion 1, 2; Connie 1, 2; Billy 1, 2; Sharon 1; and Horsefly 1, 2, 3.

2/ The file does not contain a copy of this letter but there appears to be no disagreement as to its contents.

Appellants do not dispute that the notices were late filed under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the above regulation. They contend, however, that BLM is estopped to deny that the filings were timely made due to the erroneous advice and conduct of its employees. They contend further that deprivation of their rights to the claims would be an unconstitutional taking of property.

[1] While it is unfortunate that appellants may have been misadvised, the facts show that the responsibility for compliance with the regulation was initially shouldered by appellants' lessee, T. S. & R. It was T. S. & R. who carried out the initial filings and who failed to communicate with appellants when these filings were returned as incomplete. Difficulties, caused perhaps by lack of communication between appellants and their lessee, cannot operate to vest a right not authorized by law, nor can reliance upon erroneous advice by BLM employees provide the basis for an estoppel against the United States. Dorothy Smith, 44 IBLA 25 (1979); Clair R. Caldwell, 42 IBLA 139 (1979).

[2] The substance of appellants' second argument was also addressed in Smith, *supra* at 29.

[E]ven if due process were construed to require the Department of the Interior to afford appellants some form of hearing prior to declaring their mineral location null and void, the requirement is satisfied by appellants' appeal to this Board. It is well established that where there are no disputed questions of fact and the validity of a claim turns on the legal effect to be given facts of record which show the status of the land when the claim is located, no hearing before an Administrative Law Judge is required. United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432 at 453 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966), *aff'g* The Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958); H. B. Webb, *supra*; Roy R. Cummins, 26 IBLA 223 (1976); David Loring Gamble, 26 IBLA 249 (1976); Yearl Martin, 18 IBLA 234 (1974).

Appellants' argument that retention of the materials filed by them and acceptance of their check by BLM waived any deficiency on their part is contrary to the governing precedents. Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976), cited with approval in Richard P. Smoot, 29 IBLA 1 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

